IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

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:ORDER:

Manju Rathore	Vs	The General Manager, Indian Oil Corporation, Jaipur & Ors.

S. B. CIVIL WRIT PETITION NO.3814/2004
UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

Date of Order : 17th Feb., 2005

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PRESENT

REPORTABLE

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.M.L.Garg, for the petitioner.
Mr.M.A.Siddqui]
Mr.Tejveer Singh], for the respondents.
Mr.Jitendra Chopra]

BY THE COURT:

Heard learned counsel for the parties.

A notice was published in the newspaper on 14.12.2000 for giving distributorship for the LPG Gas by the Indian Oil Corporation. The petitioner's claim is that she also applied for the LPG Gas dealership for the Makarana area situated in the District Nagour, which was reserved for the Army Personnel (Woman). According to petitioner, the said LPG distributorship was obtained by the respondent no.3 by furnishing false information to the Indian Oil Corporation. The allegations of the petitioner are that; (i) she did not disclose that she was Director of one School situated at House no.117 and 118 at Sunder Nagar, Jaipur and she is earning from the said school, (ii) the respondent no.3 was LIC agent since last so many years and was earning income from that agency, (iii) she submitted false affidavit, did not disclose income in the affidavit, The TDS certificate issued by the LIC, shows that the respondent no.3 was earning at the relevant time, (iv) she also furnished false information to the Director General, Re-settlement and she obtained eligibility certificate for the allotment of the agency, (v) she did not furnish required information in the column No.17 of the application form in relation to the land for the LPG godown, (vi) she left the column no.14 blank about her business, (vii) she is residing at Jaipur whereas the petitioner is resident of village situated in Tehsil Deedwana, which is near to Makarana, which makes the petitioner more eligible for allotment of the LPG gas agency.

Learned counsel for the petitioner reiterated what has been pleaded in the writ petition after relying upon the judgment of the Allahabad High court delivered in the case of Rajendra Pal Singh Vs. Ku. Indu Bala Bansal & Ors reported in AIR 1999 Allahabad 195 and submitted that mere suppression of the facts from the allotting authority and non-disclosure of the facts in the affidavit itself are sufficient for holding the applicant disqualified for allotment of the gas agency. According to learned counsel for the petitioner, in the said Rajendra Pal' case also the applicant's allotment of the agency was cancelled by the High Court on the ground of non-disclosure of facts in the affidavit.

In addition to above, learned counsel for the petitioner vehemently submitted that the allegations levelled by the petitioner have not been replied by both the respondents, rather both the respondents gave evasive reply and, therefore, it is clear that both the respondents suppressed the material facts from the court also.

Learned counsel appearing for the India Oil Corporation submitted that the respondent no.3 Saroj Kanwar was the only applicant, who submitted the certificate, which was a mandatory condition precedent for the allotment of the agency, thereby learned

counsel for the respondent submitted that the petitioner did not submit any certificate from the Director General, Re-settlement, Ministry of Defence and petitioner was not eligible candidate, therefore, the writ petition of the petitioner deserves to be dismissed as petitioner cannot be given the agency in case agency of respondent is cancelled. . It is also submitted that non-petitioner no.3 submitted all the relevant documents and information, which were required to judge the eligibility of the candidate for giving licence to have the agency and the allotting authority considered the documents and held the respondent eligible for the agency.

Learned counsel for the respondent no.3 submitted that the writ petition has been filed against the General Manager, Indian Oil Corporation without impleading the Indian Oil Corporation, therefore, on this count alone, the writ petition deserves to be dismissed. Learned counsel for the respondent no.3 submitted that the respondent no.3 submitted all relevant documents and also placed on record the relevant documents relating to the land where the godown will be there and affidavit evidencing that respondent no.3 has capacity to run the agency. She also placed on record the site plan of the proposed LPG godown and the Annex.R/3 by which the agency was offered to the respondent no.3 by the Indian Oil Corporation.

I considered the submissions of learned counsel for the parties and perused the record.

So far as eligibility for allotment of this licence is concerned, it has been mentioned in para no.3Kha of the advertisement issued by the Indian Oil Corporation, copy of which is placed on record by the petitioner as Annex.1. It is not the case of the petitioner that respondent no.3 was not eligible candidate under clause 'Kha' of column No.3 of the advertisement inviting applications. The allegation of the petitioner is that the respondent no.3 obtained the certificate Annex.6 from the Director General, Re-settlement, Ministry of Defence by suppressing the facts from the said authority. Copy of the certificate has been placed on record by the petitioner as Annex.6. Neither the Ministry of Defence nor the Union of India nor the Director General, Re-settlement, Ministry of Defence are party in the writ petition. The petitioner though submitted that respondent no.3 submitted affidavit before the Director General, Re-settlement, but she did not disclose that she is running a school and she is also an LIC agent. In absence of all those parties, referred above, this fact cannot be inquired into that what information was submitted by the respondent no.3 before the Director General, Re-settlement for getting the eligibility certificate. There is presumption in favour of the act of the officers in discharge of

their official duties. The petitioner could not place on record any material to show that what were the necessary informations, which should have been furnished by the respondent no.3 to the Director General, Re-settlement and have not been furnished nor the petitioner has pleaded how she came to know that the required information was not furnished by the respondent no.3 to the Director General, Re-settlement. In view of the above, it appears that the allegations appears to be bald allegations and it cannot be presumed that such an authority, without inquiring into matter, issued the certificate.

The other objection of the petitioner is in relation to not disclosing the true facts to the authorities. For this, it may be observed that in the affidavits very many facts are required to be mentioned. Some of which are necessary facts depending upon the purpose for such affidavit is filed. Some matters are very incidental, which may not have any relevance so far as they are concerned to the purpose for which affidavit is required. It is the duty of the deponent to give true and correct facts and it is also the duty of the deponent to disclose all the true facts and he should not hide any thing in the affidavit. But at the same time, when in the affidavit, if a fact which was not relevant in the circumstance or where one was not made aware what he has to disclose and it is found that that non-disclosure is immaterial or if the

deponent would have disclosed the fact, still he would have been entitled for the relief which has been granted to the deponent then such non-disclosure may be of no consequence depending upon the facts of each individual case.

So far as information, which according to petitioner was necessary and should have been incorporated in the application form and in the affidavit are of such nature, which makes the respondent no.3 ineligible for the distributorship of the LPG gas is concerned, in the advertisement, there is no mention that the petitioner should disclose whether she is working and what working will be the disqualification for the purpose of allotment of the LPG gas distributorship. The petitioner in the writ petition or otherwise by showing any instruction, guideline or rules etc. failed to convince this court that any of the information about the income of the petitioner was a necessary fact for considering the petitioner's candidature for allotment of the gas agency. Theres is no material came on record also by which it can be held that a Director of School (whether getting any remuneration or honorarium or getting nothing) or a person, who is earning without having employment was a disqualification for allotment of the LPG gas distributorship. At this juncture, it will be relevant to mention here that the respondent no.3 is a widow of ex-army personnel and if she had her own earning then in

the light of condition mentioned in the Annex.1, said event is not the disqualification. It will be worthwhile to mention here that in Annex.1 itself, the eligibility condition has been mentioned for all categories in column no.2 and the allegations levelled by the petitioner even if proved, are not falling in any of the categories by which the respondent no.3 can be declared disqualified under clause (2) of the advertisement.

Apart from it, the respondents have denied the allegations levelled by the petitioner. The stand taken by the respondent no.1 is that the respondent no.3 submitted all true and correct documents and the documents were scrutinized by the proper authorities and, thereafter, she was selected. The respondent no.1 on behalf of the Indian Oil Corporation in para no.6B clearly stated that the respondent no.3 was LIC agent and she earning income from that agency and the TDS was also deducted from the income of the respondent no.3 by the LIC and were credited to the Bank of Punjab Ltd.and all true and correct documents were given by her before her paper were scrutinized.

So far as the facts of the case of Rajendra Pal (supra) is concerned, it is clear that the petitioner in that case was convicted under Section 302 IPC. The Division Bench observed that petitioner

enclosed an affidavit in pursuance to the terms contained in para no.9 of the booklet and the format issued to him. In the said affidavit he did not disclose that he is a convict of an offence punishable under Section 302, IPC, leaving the relevant column blank. The said non-disclosure of the fact of his conviction was treated as suppression of material fact from the authorities. Suppression of such a fact of conviction in a case of murder in which he was not acquitted and only his sentence was suspended, and in view of the decision of the Hon'ble Supreme Court in the Rajendra Pal's case (supra), the finding of conviction stand so long,it is not reversed or set aside by the appellate court, as observed by the Supreme Court in the decision of Sachindra Nath Tripathi (1983 All LJ 667). That suppression of fact cannot be equated with the facts, which according to petitioner have been suppressed by the respondent no.3 in this matter.

In view of the above discussion, this court finds that petitioner, who could not obtain the certificate from the Director General, Re-settlement was not eligible for the allotment of distributorship, therefore, no relief can be granted to the petitioner and in view of the reasons mentioned above, I do not find any merit in this writ petition.

The writ petition of the petitioner is, therefore, dismissed. The

stay order granted by this court on 13.10.2004 is vacated and the stay petition is also dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-